

PUBLICATION

DOL Limits Exemption for Home Care Workers

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On December 15, 2011, the United States Department of Labor announced a proposed rule that would narrowly interpret the current exemption from minimum wage and overtime requirements for certain home care workers. Specifically, the proposed rule will clarify that the minimum wage and overtime exemption only applies to employees providing "companionship services." "Companionship services" are, in turn, defined as "fellowship and protection for a person who, because of advanced age or physical or mental infirmity, is unable to care for themselves." Under the current exemption, employees can engage in unlimited personal care services such as meal preparation, bed making, washing of clothes, and other similar services. Under the proposed regulation, an employee may not spend more than 20% of their time providing "incidental services", including dressing, grooming, toileting, driving to appointments, feeding, laundry, and bathing. This will cause most home health employees to fall outside of the exemption, causing their employers to be required to pay overtime and minimum wage.

Most significantly, the DOL proposal would remove the exemption for any employee who is employed by an employer or agency other than the family or household of the individual receiving services. In other words, the exemption will no longer apply to companionship services provided by a home health agency or staffing agency. In order to qualify for the exemption, the family of the individual receiving services must directly employ the employee to receive the overtime and minimum wage exemption.

Essentially, this proposal would take an industry of approximately 1.8 million employees and make them subject to the minimum wage and overtime requirements of the Fair Labor Standards Act.